

STATE OF MICHIGAN
COURT OF APPEALS

GERALD BUSH,

Plaintiff-Appellant,

v

ZEELAND PUBLIC SCHOOLS,

Defendant-Appellee.

UNPUBLISHED

December 14, 1999

No. 213446

State Tenure Commission

LC No. 97-000042

Before: Doctoroff, P.J., and O’Connell and Wilder, JJ.

PER CURIAM.

Plaintiff appeals from a decision and order of the State Tenure Commission that granted defendant’s motion for accelerated judgment and denied plaintiff’s motion to “disqualify and disbar” defendant’s attorneys. The State Tenure Commission concluded that it lacked jurisdiction because plaintiff’s appeal was not timely filed and that it lacked authority to disbar attorneys. We affirm.

We initially note that plaintiff filed a claim of appeal to this Court. However, appeals from a final decision and order of the State Tenure Commission are only by leave. *Watt v Ann Arbor Bd of Ed*, 234 Mich App 701, 705; 600 NW2d 95 (1999). Therefore, we are without jurisdiction to consider plaintiff’s claim of appeal as of right. Nonetheless, to prevent further delay, we treat the claim of appeal as an application for leave to appeal, grant the application, and address the merits of plaintiff’s claim. See *Lindner v Lindner*, 137 Mich App 569, 571 n 1; 358 NW2d 376 (1984).

Our review of findings of the State Tenure Commission is limited to determining whether those findings are supported by competent, material, and substantial evidence. *Parker v Byron Center Public Schools Bd of Ed*, 229 Mich App 565, 577-578; 582 NW2d 859 (1998). The commission found that plaintiff did not timely file his appeal. This finding is supported by competent, material, and substantial evidence.

The teacher tenure act, MCL 38.71 *et seq.*; MSA 15.1971 *et seq.*, provides that a teacher may appeal to the State Tenure Commission any decision of a controlling board, within twenty days of the decision. MCL 38.121; MSA 15.2021. The Zeeland Board of Education adopted a resolution on November 17, 1997, placing plaintiff on leave of absence. The resolution was amended on December

1, 1997, and plaintiff received the amended resolution on December 5, 1997. Plaintiff mailed a claim of appeal on December 24, 1997, but it was not received until December 30, 1997, after the expiration of the twenty-day period. Plaintiff argued that, because he mailed the claim of appeal within twenty days from when he received the resolution, his appeal was timely. However, the commission held that its administrative rules require that an appeal is initiated by filing a claim of appeal with the commission's office. See 1979 AC, R 38.143-145. It is well-settled that a mailing is not a filing. *Hollis v Zabowski*, 101 Mich App 456, 458; 300 NW2d 597 (1980). Accordingly, the commission properly concluded that plaintiff's appeal was not filed until it was received in the commission's office, which was past the twenty-day period. The State Tenure Commission has previously held that the twenty-day period is jurisdictional. *Almon v Detroit Bd of Ed* (97-33). Although decisions of the State Tenure Commission are not binding on this Court, we may choose to give them some deference. *Parker, supra* at 570. Therefore, the commission properly held that it was without jurisdiction because plaintiff's appeal was not timely filed.¹

Because the commission lacked jurisdiction over plaintiff's appeal, it properly denied plaintiff's motion to "disqualify and disbar" defendant's attorneys. Furthermore, 1979 AC, R. 141(1) only requires that attorneys appearing before the commission be in good standing. Nothing in the commission's administrative rules or in the teacher tenure act provides the commission with the authority to disbar attorneys. Rather, our Supreme Court is vested with the authority to regulate attorneys and the practice of law. See MCL 600.904; MSA 27A.904.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Peter D. O'Connell

/s/ Kurtis T. Wilder

¹ Plaintiff also argues that the twenty-day period should have been tolled because he offered the board an amendment to the resolution. However, plaintiff cites no authority for this proposition. "A party may not merely announce a position and leave it to this Court to discover and rationalize a basis for the claim." *FMB-First Nat'l Bank v Bailey*, 232 Mich App 711, 717; 591 NW2d 676 (1998).